



## Department of Energy

Washington, DC 20585

FEB 20 2013

Thomas Chapman, Supervisor  
U.S. Fish and Wildlife Service  
New England Field Office  
70 Commercial Street, Suite 300  
Concord, NH 03301

Subject: Section 7 compliance for the U.S. Department of Energy's proposed loan guarantee for the Cape Wind Energy Project

Dear Mr. Chapman,

As authorized under Title XVII of the Energy Policy Act of 2005<sup>1</sup> (EPAct 2005), 22 U.S.C. 16511-16514 (Title XVII), the U.S. Department of Energy (DOE) Loan Programs Office (LPO) is considering a loan guarantee to Cape Wind Associates LLC. (CWA) for financing the Cape Wind Energy Project (Project). Section 1703 of Title XVII authorizes the Secretary of Energy to make loan guarantees only for projects that "avoid, reduce, or sequester air pollutants or anthropogenic emissions of greenhouse gases; and employ new or significantly improved technologies as compared to commercial technologies in service in the United States at the time the guarantee is issued." In July 2009, DOE LPO issued a loan guarantee solicitation titled, "Federal Loan Guarantees for Projects That Employ Innovative Energy Efficiency, Renewable Energy, and Advanced Transmission and Distribution Technologies in, Reference Number: DE-FOA-0000140" pursuant to Title XVII of EPAct 2005. In response to that solicitation, on December 22, 2009, the LPO received an application for a loan guarantee from CWA for the construction and start-up for the Cape Wind Energy Project (Project).

The Project will be a wind power facility (up to 130 wind turbine generators), with a maximum electric generation output of approximately 468 megawatts, located on Horseshoe Shoal in Nantucket Sound, offshore of Cape Cod, Massachusetts. The Project will be located on the Outer Continental Shelf pursuant to Renewable Energy Lease Number OCS-A-0478 (OCS Lease), which was issued by the U.S. Department of Interior's (DOI's) Bureau of Ocean Energy Management (BOEM)<sup>2</sup> on October 6, 2010. The Project is identical to the project described in

<sup>1</sup> The Energy Policy Act established a Federal loan guarantee program for eligible energy projects that employ energy efficiency, renewable energy, and advanced transmission and distribution technologies that constitute new or significantly improved technologies (as defined in Section 609.2 of the implementing regulations set forth in Part 609 under chapter II of title 10 of the Code of Federal Regulations.

<sup>2</sup> BOEM is formerly known as the Minerals Management Service.



the Final Environmental Impact Statement (Final EIS) (MMS EIS-EA OCS 2008-040)<sup>3</sup> prepared by BOEM in January 2009 for purposes of issuing the OCS Lease.<sup>4</sup>

Concurrent with the preparation of the EIS, MMS conducted consultation under Section 7 of the Endangered Species Act (ESA). On May 19, 2008, MMS submitted a final Biological Assessment and requested formal consultation under Section 7 of the ESA with the U.S. Fish and Wildlife Service (USFWS). Pursuant to Formal Consultation #08-F-0323, USFWS issued a Biological Opinion for the Project on November 21, 2008.

DOE recognizes that a Section 7 consultation between BOEM (the lead agency) and USFWS already exists and that USFWS has issued a Biological Opinion for the project. DOE's action is strictly to guarantee a loan for the same project and there will be no additional effects to listed species other than those addressed in the existing consultations. Therefore, DOE requests to be party to the joint formal consultation with BOEM (lead agency) under Section 7 and receive incidental take coverage under the 2008 Biological Opinion.

All the documents used to make DOE's determination that the affects resulting from our action (the proposed loan guarantee) are the same as those used to develop the Biological Opinion and the associated NEPA documentation are as follows:

- 2008 Biological Assessment;
- 2009 Final EIS (MMS EIS-EA OCS 2008-040);
- Cape Wind Energy Project EA, Finding of No New Significant Impact, and the associated Record of Decision dated April 2010;
- Renewable Energy Lease Number OCS-A-0478, executed on October 6, 2010;
- 2011 Final Construction and Operation Plan; and
- Cape Wind Energy Project EA, Finding of No New Significant Impact, and the associated Record of Decision dated April 2011.

In addition, DOE has reviewed the terms, conditions, and the reasonable and prudent measures in the Biological Opinion, and should DOE execute a loan guarantee agreement (LGA), DOE will include a condition requiring that, if at any time during the life of the project, USFWS requests that ESA consultation be re-initiated, withdraws an Incidental Take Statement, or determines that the requirements of the ESA are not being satisfied, CWA must notify DOE. Further should DOE execute a LGA with CWA, it will require that CWA comply with all applicable laws and conditions of the DOI commercial lease for the project site, as well as the Biological Opinion issued by USFWS. Failure to comply may constitute loan default by CWA, for which DOE could exercise usual and customary remedies. The LPO proactively monitors all loan guarantees to ensure compliance for the duration of the loan.

To further coordinate DOE's role as a party to the joint formal consultation, DOE is copying BOEM, the lead federal agency, and the U.S. Army Corps of Engineers and the U.S.

<sup>3</sup> DOE adopted MMS EIS-EA OCS 2008-040 as DOE/EIS-0470 in December 2012.

<sup>4</sup> Per Section I.B.1 of CWA application to DOE, "Cape Wind is developing a 468-MW offshore wind generating facility six miles offshore Cape Cod on Horseshoew Shoal in Nantucket Sound... The project expects to receive a lease from the Minerals Management Service [i.e., BOEM] in the first quarter of 2010."



Environmental Protection Agency (additional federal agencies with approval or permitting authorities for the Cape Wind Project) on this correspondence.

In conclusion, we ask that you evaluate the information that DOE has provided and determine whether the proposed approach is sufficient to satisfy DOE's Section 7 responsibilities. If you have any questions, please contact Mr. Todd Stribley on my staff at [Todd.Stribley@hq.doe.gov](mailto:Todd.Stribley@hq.doe.gov), or at 202-287-6526.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew C. McMillen". The signature is fluid and cursive, with the first name "Matthew" and last name "McMillen" clearly distinguishable.

Matthew C. McMillen, Director  
Environmental Compliance Division  
Loan Programs Office

cc:

Andrew Krueger, Project Coordinator, Bureau of Ocean Energy Management  
Karen Adams, Permit Project Manager, U.S. Army Corps of Engineers, New England District  
Stephen Perkins, Director, Office of Ecosystem Protection, U.S. EPA, Region. 1